

The North Carolina Innocence Inquiry Commission Rules and Procedures

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These Rules and Procedures (Rules) were adopted by the members of the North Carolina Innocence Inquiry Commission (Commission) pursuant to N.C. G.S. § 15A-1460-1475 to serve as a guideline for all functions of the Commission and the Commission staff. These Rules may be altered, amended, and updated as needed by a majority vote of the Commission. These Rules will be reviewed annually for any necessary updates and changes.

An appendix of tables and forms and annotations prepared by the drafting sub-committee may be attached to the Rules. These references are not an authoritative source on parity with the Rules and are published to aid in understanding and utilizing the Rules.

The Commission contemplates that exceptions to the Rules may arise. Any action taken by the Commission or the Commission staff that is not in compliance with the Rules shall be approved by the Commission Chair and in no way conflict with the provisions of N.C. G.S. § 15A-1460-1475.

In the event that a rule presents two meanings, the appendix may be referred to as a reference to the intent behind the rule. A conflicting rule shall be brought to the attention of the Commission for possible modification.

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Preamble History of the Commission

In November 2002, in response to concern about decreased public confidence in the justice system after several highly publicized exoneration cases, the North Carolina Chief Justice's Criminal Justice Study Commission¹ was established by Chief Justice I. Beverly Lake, Jr. The Commission was established to provide a forum for education and dialog between representatives from the different perspectives of the criminal justice system regarding causation issues in wrongful convictions.

One of the first priorities of the Chief Justice's Commission was an evaluation of North Carolina's post-conviction review of innocence claims. Although the reasons for the original convictions of North Carolina's exonerated vary, each exoneration can be characterized as delayed, lengthy, costly, and damaging to the public's confidence in its justice system. In addition, judges, prosecutors, and defense attorneys on the Chief Justice's Commission expressed concern regarding the volume of post-conviction motions, the difficulty in identifying credible claims of innocence, and the procedural and political challenges involved with resolution of claims.

After a year and a half of study and review of post-conviction processes both within and outside of the United States, the Chief Justice's Commission drafted and presented to the North Carolina General Assembly a bill establishing the North Carolina Innocence Inquiry Commission. Signed into law in August 2006, the Innocence Inquiry Commission is charged with providing an independent and balanced truth-seeking forum for credible claims of innocence in North Carolina. The Commission is a diverse group with representation from the judiciary, law enforcement, the defense bar, prosecutors, victim's advocates, and the public.

Article 1 Applicability of the Statute

- (A) **The Statute.** The Statute designated by the North Carolina General Statutes (N.C. G.S.) as Article 92 § 15A-1460-1475 (the Statute) creates the Commission and sets forth the duties of the Commission and the Commission staff.
- (B) **Definitions.** The definitions cited in the Statute shall apply to all terms set forth in these Rules.
- (C) **Statute Prevails.** The rules set forth in this document shall never conflict with the Statute. In the event that a conflict appears, the Statute shall prevail. Any conflict shall be brought to the attention of the Commission to be modified to bring the Rules into compliance with the Statute.

¹ This Commission was originally named the North Carolina Actual Innocence Commission.

Article 2

Criteria for Review of an Innocence Claim

- (A) **Criteria.** The following criteria shall be met before an innocence claim may move into the formal inquiry phase. Any criteria that require some level of discretion shall be referred directly to the Executive Director or her/his designee.
1. Conviction must have been in North Carolina state court. N.C. G.S. § 15A-1460(1).
 2. Conviction must be for a felony. N.C. G.S. § 15A-1460(1).
 3. Claimant must be a living person. N.C. G.S. § 15A-1460(1).
 4. Claimant must be claiming complete factual innocence for any criminal responsibility for the crime, including any other reduced level of criminal responsibility relating to the crime. N.C. G.S. § 15A-1460(1).
 5. Credible evidence of innocence must exist. N.C. G.S. § 15A-1460(1).
 6. Verifiable evidence of innocence must exist. N.C. G.S. § 15A-1460(1).
 7. The credible, verifiable evidence of innocence must not have been previously heard at trial or in a post-conviction hearing. N.C. G.S. § 15A-1460(1).
 8. Claimant must sign an agreement pursuant to N.C. G.S. § 15A-1467.
- (B) **Guilty Plea Cases.** In order for a claim that arose from a guilty plea to be considered by the Commission, there must be credible, verifiable evidence of innocence that was not reasonably available to the claimant at the time that he/she pleaded guilty or scientific testing that was not completed.
- (C) **Other Types of Pleas.** All Rules relating to guilty pleas will also apply to pleas entered pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), or pleas of no contest and *nolo contendere*.
- (D) **Rejection of a Claim.** If at any point prior to hearing, the case is determined to no longer meet the criteria, the claim shall be rejected. N.C. G.S. § 15A-1467(a).

Article 3

Initiation of an Innocence Claim

- (A) **Contact Information.** The Commission staff shall create and maintain a webpage with information on how to initiate an innocence claim and a statement of the Commission's mission. The website will include contact information for the Commission.
- (B) **Initiation of a Claim.**
1. **Claimant.** An innocence claim for convictions of homicide, robbery, any offense requiring registration, and any other Class A through E felony may be made directly by the claimant.
 2. **Agency or Counsel.** An innocence claim for any conviction may be referred by a state or local agency or a claimant's counsel.
 - i. The referral by a state or local agency or claimant's counsel shall be in writing.

- ii. The case will not be accepted for review by the Commission until the referring agency or attorney provides a copy of their entire file on the case.
 - iii. The referring agency or attorney must cease their own independent investigation of the case, unless specifically authorized by the Executive Director or his/her designee or unless otherwise authorized by law.
- (C) **Confidentiality.** Once a claim is initiated with the Commission, the Claimant, his counsel, or the referring state or local agency, shall not directly or indirectly relay information about the Commission's investigation to members of the media or the public, unless specifically authorized by the Executive Director or his/her designee.
- 1. **Remedy.** Violation of this provision may result in closure of the case for failure to cooperate, a proceeding for contempt of court, or referral to the State Bar as appropriate. All contempt proceedings related to this section shall be heard by the Commission Chair in his/her judicial capacity.

Article 4

Review of an Innocence Claim

- (A) **Tracking of Claims.** The Executive Director or his/her designee shall create and maintain a tracking system that will, at a minimum, record the name of the claimant and the ultimate outcome of their claim. N.C. G.S. § 15A-1465(a).
- (B) **Filing System.** The Executive Director or his/her designee shall create and maintain a filing system for the innocence claim physical files pursuant to N.C. G.S. § 15A-1465(a). When a file is moved for investigation or review purposes, the tracking system shall track the location of the physical file.
- 1. **Maintaining Files.** Complete files will be maintained for a minimum of three years after the claim is rejected.
- (C) **Review of a Claim.** The Executive Director or his/her designee shall create a procedure for reviewing and gathering information on an innocence claim. N.C. G.S. § 15A-1465(a).
- (D) **Students.** The Commission staff may utilize student resources for all levels of case work. In no case, will decision-making authority rest with students.
- (E) **Decision-Making Authority.** The Executive Director or his/her designee will have authority to make the decision whether to reject a case, call for further review, or move a case into formal inquiry.
- (F) **Priority.** The Commission staff will give priority to investigation of cases where the claimant is currently incarcerated solely for the crime(s) in which he or she claims factual innocence. N.C. G.S. § 15A-1466(2).
- 1. **Priority Definition.** For the purposes of this section, priority means that a case where a claimant is currently serving time for multiple offenses, at least one of which the claimant is not claiming complete factual innocence, or where a claimant is no longer incarcerated, may be investigated only when resources permit, unless there are compelling circumstances justifying a decision by the Executive Director to

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investigate such cases on an expedited timetable. The following is a non-exhaustive list of possible compelling circumstances: (1) DNA evidence, which has not been heard by a judge or jury, is favorable to the claimant; (2) the Executive Director has decided that the case will be heard before the full Commission; and/or (3) an expedited investigation is necessary to ensure the availability of witnesses or the integrity of available records and evidence.

- (G) **Investigation Procedures.** The Executive Director and staff shall create an investigation procedure unique to each case and keep detailed records throughout the investigation.
1. **Investigation Updates.** Regular reports of investigation will be made to the Executive Director, and he/she will coordinate investigations. N.C. G.S. § 15A-1465(a).
- (H) **Investigative Power.** The Commission staff may employ the Rules of Civil Procedure set out in N.C. G.S. § 1A-1 to obtain information and may use any measure set forth in N.C. G.S. § 15A. “The Commission may issue process to compel the attendance of witnesses and production of evidence, administer oaths, petition the Superior Court of Wake County or of the original jurisdiction for enforcement of process or for other relief, and prescribe its own rules of procedure.” N.C. G.S. § 15A-1467(d).
- (I) **Preservation.** Upon receiving written notice from the Commission of a Commission inquiry, the State shall preserve all files and evidence subject to disclosure under G.S. 15A-903. The Commission shall provide written notice to the State once the inquiry is complete. N.C. G.S. § 15A-1471(a).
- (J) **Discovery and Disclosure.** All North Carolina discovery and disclosure statutes apply retroactively to any case under formal inquiry by the Commission staff. N.C. G.S. § 15A-1467(f). The Commission is entitled to a copy of all records subject to G.S. 15A-903 including access to inspect and examine all physical evidence. N.C. G.S. § 15A-1471(b).
- (K) **Custody of Evidence.** Upon request of the Commission, the State shall transfer custody of physical evidence to the Commission's Director, or the Director's designee, for forensic and DNA testing. The Commission shall preserve evidence in a manner reasonably calculated to prevent contamination or degradation of any biological evidence that might be present, while subject to a continuous chain of custody and securely retained with sufficient official documentation to locate the evidence. At or prior to the completion of the Commission's inquiry, the Commission shall return all remaining evidence.
- (L) **Forensic Testing.** The Commission shall have the right to subject physical evidence to forensic and DNA testing, including consumption of biological material, as necessary for the Commission's inquiry. If testing complies with FBI requirements and the data meets NDIS criteria, profiles obtained from the testing shall be searched and uploaded to CODIS. The Commission shall incur all costs associated with ensuring compliance with FBI requirements and NDIS criteria.
- (M) **Challenges to Authority.** In the event that there are challenges to the authority of the Commission staff or the Commission's access to evidence, the Chairman of

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the Commission will conduct such inquiries as may be necessary. N.C. G.S. § 15A-1467(d).

- (N) **Refusal to Cooperate.** If the claimant is uncooperative with the Commission staff in any way, the inquiry will be discontinued pursuant to N.C. G.S. § 15A-1467(g).
- (O) **Rejection.** If at any point prior to hearing, it is determined that the case no longer meets the criteria set out in Article 2, it will be rejected. N.C. G.S. § 15A-1467(a). Rejection prior to hearing may only be done with the consent of the Executive Director.
- (P) **Reapplication.** If an innocence claim is initiated based on a case that has already been rejected by the Commission, there must be new evidence of innocence to consider.

Article 5 Signed Agreement

- (A) **Signed Agreement.** The claimant shall sign an agreement waiving his/her procedural safeguards and privileges, agreeing to cooperate with the Commission, and agreeing to provide full disclosure regarding all inquiry requirements to the Commission. N.C. G.S. § 15A-1467(b).
 - 1. **Right to Counsel.** The claimant has the right to representation before signing the agreement.
 - a. The claimant may retain counsel, apply for appointed counsel or represent himself/herself by signing a waiver.
 - b. If the claimant applies for appointed counsel, the Commission chair shall determine the claimant's indigency status and, if appropriate, enter an order for appointment of counsel by Indigent Defense Services for the purpose of advising on the agreement.
 - i. If the claimant has requested a specific attorney with knowledge of the case, the Director shall inform Indigent Defense Services of that request for their consideration.
 - ii. If the Executive Director is aware of a potential conflict, he/she will bring that to the Commission Chair's attention. If the Commission Chair determines that there is a conflict, he/she will provide or will instruct the Executive Director to provide that information to Indigent Defense Services.
 - c. If the claimant elected to retain or was assigned court appointed counsel, the claimant's counsel shall be present at the signing of the agreement.
 - 2. **Procedure for Signing the Agreement.** The claimant's signature shall be verified by counsel, or in the event that the claimant is representing himself/herself, the signature shall be notarized. The original copy of the agreement shall be delivered to the Commission staff.
 - 3. **Attorney-Client Privilege.** The waiver of procedural safeguards and privileges applies to attorney-client privilege for all matters relating to the claimant's innocence claim, including the attorney retained or appointed

as a part of N.C. G.S. § 15A-1467(b) or 1469. This does not create an affirmative duty on the part of the attorney to disclose.

4. **Refusal to Cooperate.** If the claimant refuses to comply with the terms of the agreement or is uncooperative with the Commission staff in any way, the inquiry will be discontinued pursuant to N.C. G.S. § 15A-1467(g).

(B) **Claimant Interviews and Forensic Testing.** In the course of its inquiry, the Commission may interview claimants or conduct forensic testing. Claimant interviews and forensic testing shall occur after the execution of the signed agreement. N.C. G.S. § 15A-1467(b1).

Article 6

Formal Inquiry of an Innocence Claim

(A) **Initiation of Formal Inquiry.** The determination of whether to grant a formal inquiry regarding any other claim of factual innocence is in the discretion of the Commission. This authority is delegated to the Commission's Executive Director or his/her designee. No formal inquiry may be granted prior to the execution of the signed agreement, in which the claimant waives his/her procedural safeguards and privileges, agrees to cooperate with the Commission, and agrees to provide full disclosure regarding all inquiry requirements to the Commission.

(B) **Counsel.** The claimant has the right to representation throughout any formal inquiry process. The claimant may retain counsel, apply for court appointed counsel, or represent himself/herself by signing a waiver. N.C. G.S. § 15A-1467(b).

1. **Court Appointed Counsel.** If the claimant chooses to apply for court appointed counsel, the Commission Chair shall determine indigency status and, if appropriate, enter an order for appointment of counsel by Indigent Defense Services for the duration of the formal inquiry.

- a. If the claimant has requested a specific attorney with knowledge of the case, the Director shall inform Indigent Defense Services of that request for their consideration.
- b. If the Executive Director is aware of a potential conflict, he/she will bring that to the Commission Chair's attention. If the Commission Chair determines that there is a conflict, he/she will provide or will instruct the Executive Director to provide that information to Indigent Defense Services.

(C) **Victim Notification.** The Commission's Executive Director or his/her designee shall use due diligence to notify any victims of the underlying crime about the formal inquiry and explain the inquiry process. N.C. G.S. § 15A-1467(c). If any victim is no longer living, efforts shall be made to notify the victim's next of kin. The victim's family will designate one member as the contact person for all victim notifications and rights.

1. **Victim's Rights.** The Commission's Executive Director or his/her designee shall inform the victim of his/her right to present his/her views throughout the formal inquiry. The Commission staff shall assist the

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victim or the victim's family to understand the Commission's procedures and the victim's rights. N.C. G.S. § 15A-1467(c).

2. **Victim/Next of Kin.** If the Victim is no longer living, the Commission shall deem any living relative of the Victim as the Victim's next of kin to fulfill this requirement. The Commission shall treat this individual as the next of kin and he/she shall be entitled to all Victim notifications and rights.

(D) **Co-Defendant Notification.** Absent a showing of good cause and approval of the Commission chair, once a formal inquiry has been granted, the Commission shall use due diligence to notify each co-defendant of the claim and inform him/her that if he/she wishes to file a claim, he/she must do so within 60 days of the notice or his/her claim may be barred from future investigation by the Commission absent a showing of good cause and approval of the Commission Chair. N.C. G.S. § 15A-1467(c1) and N.C. G.S. § 15A-1567(a).

1. **Commission Exception.** Should the Commission's Executive Director determine that good cause may exist to not notify a co-defendant of a formal inquiry, he/she may present this showing to the Chair for approval.
2. **Claimant Exception.** Should there exist good cause why a claimant failed to make a claim with the Commission within 60 days from receipt of the notice, the Commission's Executive Director may present this showing to the Chair for approval.

(E) **Confidential Case Status Updates.** The Commission's Executive Director will provide a confidential case status update for each case in formal inquiry once every six months. This update will be provided to the District Attorney and the claimant, or counsel, if any, or referring counsel in the event that the claimant does not have counsel. N.C. G.S. § 1467(c2).

1. **Method.** The method used to provide the updates shall be in the discretion of the Commission's Executive Director.
2. **Remedy.** These updates are confidential and their contents shall not be disclosed. Any violation of the confidentiality may result in a proceeding for contempt of court or referral to the State Bar as appropriate. All contempt proceedings related to this section shall be heard by the Commission Chair in his/her judicial capacity.

(F) **Agreement to Proceed to Three-Judge Panel.** At any point during formal inquiry the District Attorney and the claimant or the claimant's counsel may agree that there is sufficient evidence of factual innocence to merit judicial review by the three-judge panel and bypass the eight-member panel. The Director and the Commission Chair shall be notified in writing of any such agreement. N.C. G.S. § 1468(f).

Article 7

Hearing before the North Carolina Innocence Inquiry Commission

- (A) **Prehearing Conference.** At least 10 days prior to a hearing before the full Commission, the Commission's Executive Director or his/her designee shall offer an opportunity to attend a prehearing conference. N.C. G.S. § 15A-1468(a2).
1. **Attendance.** Only the following persons shall be notified or authorized to attend the prehearing conference: the District Attorney or his/her designee, the claimant's counsel, the Commission Chair, the Executive Director of the Commission, and any Commission staff designated by the Director. N.C. G.S. § 15A-1468(a2).
 2. **Inspection.** The District Attorney, or designee, shall be provided an opportunity to inspect any evidence that may be presented to the Commission that has not previously been presented to any judicial officer or body and any information that he or she deems relevant to the proceedings. N.C. G.S. § 15A-1468(a2).
 3. **Written Statement.** At least 72 hours prior to the Commission hearing, the District Attorney or designee may provide the Commission, through the Executive Director, with a written statement to be included as part of the record. N.C. G.S. § 15A-1468(a2). The written statement will be handed out to Commissioners and will become public record if the case is referred to a three-judge panel.
 4. **Waiver.** Any person may waive their right to attend the prehearing conference. Failure to respond to an invitation to the conference shall be considered a waiver of the right to attend.
- (B) **Hearing Requirements.** A hearing before the Commission shall include all eight members of the Commission including the Commission Chair. N.C. G.S. § 15A-1468.
- (C) **Commissioner Recusal.** A Commissioner shall recuse himself/herself if he/she had any involvement in the case during the original trial or any post-conviction motions. A Commissioner shall recuse himself/herself if some event has caused him/her to become biased about a case and unable to participate in the hearing in a fair and impartial manner.
1. **Formal Recusal.** At the beginning of the hearing, the Commission Chair shall make a formal inquiry as to whether any Commissioner needs to recuse himself/herself.
 2. **Prior Information.** It is contemplated that information about cases may be made known to Commissioners before the hearing without requiring them to recuse themselves.
 3. **Independent Investigation.** In no event will a Commissioner conduct his/her own independent investigation or review of a case.
- (D) **Alternate Commissioners.** In the event that a Commissioner is unable to attend a hearing or has recused himself/herself, the Commissioner's Alternate shall fulfill the duties of the Commissioner. N.C. G.S. § 15A-1463(b). If an Alternate Commissioner is not fulfilling full Commission duties, he/she may attend

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hearings of the Commission, but may not participate in deliberations and may not vote.

(E) **Open and Closed Proceedings.** The functions of the Commission are exempt from public meetings laws.

1. **Public Hearing.** A hearing before the Commission will be a public hearing. Any public hearing before the Commission shall be subject to the Commission's rules of operation. N.C. G.S. § 15A-1468(a).
 - i. The Chair may, in his/her judicial capacity remove individuals from the hearing.
 - ii. Portions of the Commission hearing may be closed to the public at the discretion of the Chair, in his/her judicial capacity.
 - iii. If the Victim or Victim's next of kin chooses to give a statement, this portion of the hearing will be recorded, but shall be closed to the public.
 - iv. Deliberations of the Commission are closed to the public and confidential.
2. **Closed Proceedings.** All other proceedings and administrative meetings of the Commission are closed.

(F) **Victim Notification.** The Executive Director or his/her designee will use all due diligence to notify the victim or the victim's next of kin at least 30 days prior to the presentation to the full Commission pursuant to N.C. G.S. § 15A-1468(b).

1. **Hearing.** The victim or next of kin are permitted to attend Commission hearings, excluding Commission deliberations. A victim or next of kin may be accompanied to a Commission hearing by a family member or other support person. The Commission will pay for mileage, meals, and lodging for the Victim and one support person.
2. **Notification of Result.** The Executive Director or his/her designee will use all due diligence to immediately notify the victim or the victim's next of kin of the Commission's decision. N.C. G.S. § 15A-1468(c).

(G) **Recording.** A proceeding before the Commission shall be recorded and transcribed. All votes of the Commission members shall be a part of the record. N.C. G.S. § 15A-1468(e).

1. **Confidential Records.** All records of the Commission proceedings are confidential and exempt from public record and public meeting laws, except as described in section 2 below.
2. **Judicial Review.** If the Commission votes for judicial review, the records that support that conclusion shall become public when filed with the Superior Court of original jurisdiction. This public disclosure shall include all files and materials considered by the Commission and a full transcript of the hearing before the Commission. The Commission Chair in his/her judicial capacity may order that documents containing sensitive information remain confidential, not be filed with the Court, and not become public record.
3. **No Further Review.** If the Commission votes against judicial review, the records shall not become public record and shall remain confidential.

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- (H) **Presentation.** The Executive Director or his/her designee shall make a presentation of all relevant evidence to the Commission. Relevant evidence will include information on evidence originally presented to a jury or used for plea bargaining, evidence presented at any post-conviction hearings, and any evidence supporting the claimant's claim of complete factual innocence.
1. **Hearing of Evidence.** All evidence will be presented simultaneously to each Commissioner. In no event will a Commissioner hear evidence apart from the other members of the Commission. This does not include Commission staff seeking approval from the Commission Chair for work on a case.
 2. **Evidence.** The presentation may include evidence not limited to, affidavits, testimony of witnesses, presentation of physical evidence, expert testimony, laboratory reports, medical evidence, documents, recorded evidence, or electronic evidence.
 - a. **Testimony.** In the event that testimony is provided as a part of the presentation, the Commission Chair will administer the oath to the witness. The Executive Director of the Commission or his/her designee will examine the witness, but any member of the Commission may ask additional questions of the witness.
 3. **Written Report.** The Executive Director and/or his/her designee shall provide the members of the Commission with a written report prior to the presentation.
- (I) **Vote.** After hearing the evidence, the Commission members will vote on whether there is sufficient evidence of factual innocence to merit judicial review. N.C. G.S. § 15A-1468(c).
1. **Closed Deliberation.** The Commission's deliberation and vote shall be closed.
 2. **The Standard of Review.** The standard for voting shall be "sufficient evidence of factual innocence to merit judicial review." N.C. G.S. § 15A-1468.
 3. **Five Votes Required.** If the case did not arise from a guilty plea, at least five members shall vote for judicial review in order for the case to be referred to the Chief Justice of the North Carolina Supreme Court pursuant to N.C. G.S. § 15A-1468(c).
 4. **Eight Votes Required.** If the case arose from a guilty plea, all eight members shall vote for judicial review in order for the case to be referred to the Chief Justice of the North Carolina Supreme Court pursuant to N.C. G.S. § 15A-1468(c).
 5. **All Members Vote.** "All eight voting members of the Commission shall participate in the final vote." N.C. G.S. § 15A-1468(c).
- (J) **Findings of Fact.** At the close of the voting, the Commission Chair will make specific findings of fact regarding the case. N.C. G.S. § 15A-1468(c).
- (K) **Continuation of the Hearing.** The Commission may vote to continue the hearing and request additional information when they resume.
- (L) **Judicial Review.** In the event that the Commission votes for further review, the opinion will be documented and the opinion, findings of fact, and record in

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support of the opinion will be filed with the Clerk of Court of Superior Court in the district in which the case arose, with copies to the Senior Resident Superior Court Judge, District Attorney, and claimant or claimant's counsel. N.C. G.S. § 15A-1468(c).

1. **The Record.** The record will include all documents considered by the Commission during the hearing. This includes, but is not limited to, the Commission brief, any exhibits handed out during the Commission hearing, and the transcript of the Commission hearing. The record will not include any documents containing sensitive information that the Chair in his/her judicial capacity has ordered to remain confidential, not be filed with the Court, and/or not become public record.
 2. **Filing.** The record will become public record once it is filed with the Clerk of Superior Court in the district in which the case arose.
 3. **Public Record.** Any documents that are provided to the parties or judges prior to becoming public record are not public record until they are filed or introduced in court.
- (M) **Service.** A copy of the opinion, findings of fact, and record will be served on the District Attorney in the original jurisdiction. If the case was a capital case, service will be on both the District Attorney and the Attorney General. A copy will also be served on the claimant or claimant's counsel, if any.
- (N) **No Review.** In the event that the Commission does not vote for judicial review, the opinion will be documented and filed in the office of the Clerk of Superior Court in the district in which the case arose, with copies to the District Attorney and Senior Resident Superior Court Judge. N.C. G.S. § 15A-1468(c)
- (O) **Disclosure of File.** If the Commission concludes there is sufficient evidence of factual innocence to merit judicial review, the Commission shall make a copy of the entire file available to the district attorney and the defense counsel.
1. **Confidentiality.** All files and records not filed with the clerk of superior court or presented at the Commission hearings are confidential and exempt from the public record. Any violation of the confidentiality may result in a proceeding for contempt of court or referral to the State Bar as appropriate. All contempt proceedings related to this section shall be heard by the Commission Chair in his/her judicial capacity.
 2. **Protective Orders.** Due to the sensitive nature of files obtained during the course of the Commission's inquiries, and the existence of protective orders related to files obtained during the course of the Commission's inquiries, the Commission's Executive Director may request that the District Attorney and claimant or claimant's counsel consent to a protective order related to the Commission's file or any portion thereof. If the District Attorney, claimant or claimant's counsel will not consent to the entry of a protective order, the Commission's Executive Director, or counsel for the Commission, shall request to be heard before the Senior judge of the three-judge panel prior to turning over the Commission's files to the district attorney and defense counsel. The District Attorney and defense counsel shall be given an opportunity to be heard.

- (P) **Prosecutorial Misconduct.** If the Commission concludes that there is credible evidence of prosecutorial misconduct in the case, the Chair of the Commission may request the Attorney General to appoint a special prosecutor to represent the State in lieu of the district attorney of the district of conviction or the district attorney's designee. This request shall be made within 20 days of the filing of the Commission's opinion. N.C. G.S. § 15A-1469(a1).

Article 8

Post-Commission Three Judge Panel

- (A) **Referral.** If the Commission votes that there is sufficient evidence of factual innocence to merit judicial review, or the district attorney and the claimant's attorney agree, the Chair of the Commission will ask the Chief Justice of the North Carolina Supreme Court to commission a three-judge panel to hear evidence relevant to the Commission's recommendation. N.C. G.S. § 15A-1469.
1. **Previous Involvement in the Case.** The panel shall not include any judge who had substantial previous involvement in the case. N.C. G.S. § 15A-1469.
- (B) **Setting the Hearing.** The senior resident superior court judge in the district of original jurisdiction of the case shall enter an order setting the hearing for a special session of superior court. N.C. G.S. § 15A-1469(a).
1. **Response from the State.** The State will be required to file a response to the Commission's opinion within 90 days of the order setting the hearing. N.C. G.S. § 15A-1469(b).
- (C) **Victim Notification.** The Clerk of Court shall notify the victim or victim's next of kin by writing at least 30 days prior to the hearing. N.C. G.S. § 15A-1469(f).
- (D) **Counsel.** The claimant may elect to retain his/her own counsel, represent himself/herself, or waive the right to counsel. If the claimant chooses to apply for court appointed counsel, the senior resident superior court judge in the district of original jurisdiction shall determine the claimant's indigency status and order Indigent Defense Services shall assign counsel if necessary.
1. If the claimant has requested a specific attorney with knowledge of the case, the Director shall inform Indigent Defense Services of that request for their consideration.
 2. If the Executive Director is aware of a potential conflict, he/she will bring that to the Commission Chair's attention. If the Commission Chair determines that there is a conflict, he/she will provide, or will instruct the Executive Director to provide, that information to Indigent Defense Services.
- (E) **Relief of Costs.** The senior resident superior court judge may enter an order relieving the claimant of any portion of the costs of proceedings. N.C. G.S. § 15A-1469(e).
- (F) **The State.** The District Attorney or his designee of the district of conviction shall represent the State, except as otherwise provided by statute. N.C. G.S. § 15A-1469(c).

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- (G) **Role of the Commission Staff.** The Executive Director or his/her designee shall be present at this hearing and available to the panel of Judges and parties as needed.
- (H) **Right to be Present.** The claimant has a right to be present at the hearing and have counsel present. If the claimant chooses to waive his/her right to be present, the waiver shall be done in writing. N.C. G.S. § 15A-1469(d).
- (I) **The Hearing.** The hearing shall be an evidentiary hearing conducted by the three judge panel. The Judges may compel the testimony of any witnesses, including the claimant. All credible, verifiable evidence relevant to the case, even if considered by a jury or judge in a prior proceeding, may be presented during the hearing. The Judges may also continue the hearing, if necessary, to secure additional information. The claimant may not assert any privileges or prevent any witnesses from testifying. N.C. G.S. § 15A-1469(d).
- (J) **The Evidence.** The district attorney and defense counsel may determine which evidence, if any, will be presented to the three-judge panel.
- (K) **Conference.** The senior judge on the panel may allow the attorneys for the parties to appear before him for a conference on any matter in the case. N.C. G.S. § 15A-1469(g).
- (L) **Judicial Standard.** The three judge panel will hear the evidence and determine if there is clear and convincing evidence of the claimant's innocence. N.C. G.S. § 15A-1469(h).
- (M) **Vote.** The vote of the three judge panel shall be unanimous. N.C. G.S. § 15A-1469(h).
 - 1. **Relief Granted.** If the vote of the panel is unanimous that clear and convincing evidence exists of the claimant's innocence, the panel shall enter a dismissal of all charges. N.C. G.S. § 15A-1469(h).
 - 2. **Relief Denied.** If the vote of the panel is not unanimous that clear and convincing evidence exists of the claimant's innocence, the panel shall deny relief. N.C. G.S. § 15A-1469(h).
- (N) **Finality of Decision.** The decision of the panel of three judges is final and no appeal is available. N.C. G.S. § 15A-1470(a).

Article 9 Other Proceedings

- (A) **Effect on Other Post-Conviction Motions.** The process has no effect on other post-conviction motions. N.C. G.S. § 15A-1470(b).
- (B) **Return to Referring Agency.** If the Commission closes a case that was referred by a state or local agency or counsel of the claimant, the case shall be returned to that state or local agency or counsel.

Article 10

Disclosure

- (A) **Evidence of Guilt.** Evidence uncovered by the Commission's staff that supports the claimant's guilt will be made available to the district attorney if it was not available to the district attorney at the time of conviction.
1. **Evidence of Other Crimes.** Evidence uncovered by the Commission's staff that tends to show the claimant may have committed other unrelated felonies will be made available to the district attorney who would have jurisdiction over those felonies.
 2. **Evidence of Greater Crimes.** Evidence uncovered by the Commission's staff that tends to show the claimant may be guilty of a higher level crime than the one for which he/she was charged or convicted shall be made available to the district attorney who would have jurisdiction over the higher level crime.
 3. **Evidence of Other Person's Involvement.** Evidence uncovered by the Commission's staff that tends to show that other people may have been involved in the commission of the crime will be made available to the district attorney who would have jurisdiction over that crime.
- (B) **Evidence Favorable to the Claimant.** Evidence uncovered by the Commission's staff that is favorable to the claimant shall be disclosed to the claimant and the claimant's counsel. The disclosure shall occur regardless of the outcome of the hearings. N.C. G.S. § 15A-1468(d).
- (C) **Evidence of Wrongdoing.** Evidence of criminal acts, professional misconduct, or other wrongdoings uncovered and made as a finding by the Commission shall be referred to the proper authority. N.C. G.S. § 15A-1468(d).

Article 11

Other Duties of the Commission

- (A) **Report to Legislature.** The North Carolina Innocence Inquiry Commission shall report annually by February 1 of each year on its activities to the Joint Legislative Oversight Committee on Justice and Public Safety and the State Judicial Council. The report may contain recommendations of any needed legislative changes related to the activities of the Commission and shall recommend the funding needed by the Commission.
- (B) **Annual Audit.** The Commission is subject to an annual audit by the Administrative Office of the Courts. The Commission's Executive Director shall provide all relevant materials and cooperate during this audit.
- (C) **Policies and Procedures.** The Commission's Executive Director shall develop internal policies and procedures for operations of the Commission.
- (D) **Additional Funds.** The Executive Director or his/her designee will apply for and accept any funds that may become available to further the work of the Commission. N.C. G.S. § 15A-1466(6).

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- (E) **Media Inquiries.** The Commission staff shall not respond to media inquiries. The Executive Director or his/her designee may respond to media inquiries about the Commission. The Executive Director or his/her designee should not discuss details of cases that are not public record.
1. Commissioners, past and present, shall consult with the Executive Director prior to any presentations regarding the Commission or responding to any media requests related to the Commission.
Commissioners shall not discuss cases or case deliberations.
- (F) **Commission Staff.** When Commission staff members leave employment with the Commission, they shall confirm that all work materials and case documents are returned to the Commission and no case files are in the staff member's personal possession.

Appendix A

Footnoted List of Criteria for Review of an Innocence Claim

“The Commission may informally screen and dismiss a case summarily at its discretion.”
N.C. G.S. § 15A-1467

(A) **Criteria.** The following criteria shall be met before an innocence claim may move into the formal inquiry phase. Any criteria that require some level of discretion shall be referred directly to the Executive Director or her/his designee.

1. Conviction must have been in North Carolina state court. N.C. G.S. § 15A-1460(1).
2. Conviction must be for a felony. N.C. G.S. § 15A-1460(1).
3. Claimant must be a living person. N.C. G.S. § 15A-1460(1).
4. Claimant must be claiming complete factual innocence for any criminal responsibility for the crime.^{2,3} N.C. G.S. § 15A-1460(1).
5. Credible evidence of innocence must exist.⁴ N.C. G.S. § 15A-1460(1).
6. Verifiable evidence of innocence must exist.⁵ N.C. G.S. § 15A-1460(1).
7. Claim must not have been previously heard at trial or in a post-conviction hearing.⁶ N.C. G.S. § 15A-1460(1).
8. Claimant must sign agreement pursuant to N.C. G.S. § 15A-1467.

(B) **Guilty Plea Cases.** In order for a claim that arose from a guilty plea to be considered by the Commission, there must be credible, verifiable evidence of innocence that was not reasonably available to the claimant at the time that he/she pleaded guilty or scientific testing that was not completed.⁷

² Claims of secondary involvement are not considered claims of complete factual innocence.

³ Claims of reduced level of culpability or not considered claims of complete factual innocence. As an example, a person convicted of Possession with Intent to Manufacture Sell or Deliver a Controlled Substance is not claiming complete factual innocence if they claim that they possessed the controlled substance only for personal use.

⁴ Credible evidence may include recantation of a witness, only if it is deemed reliable.

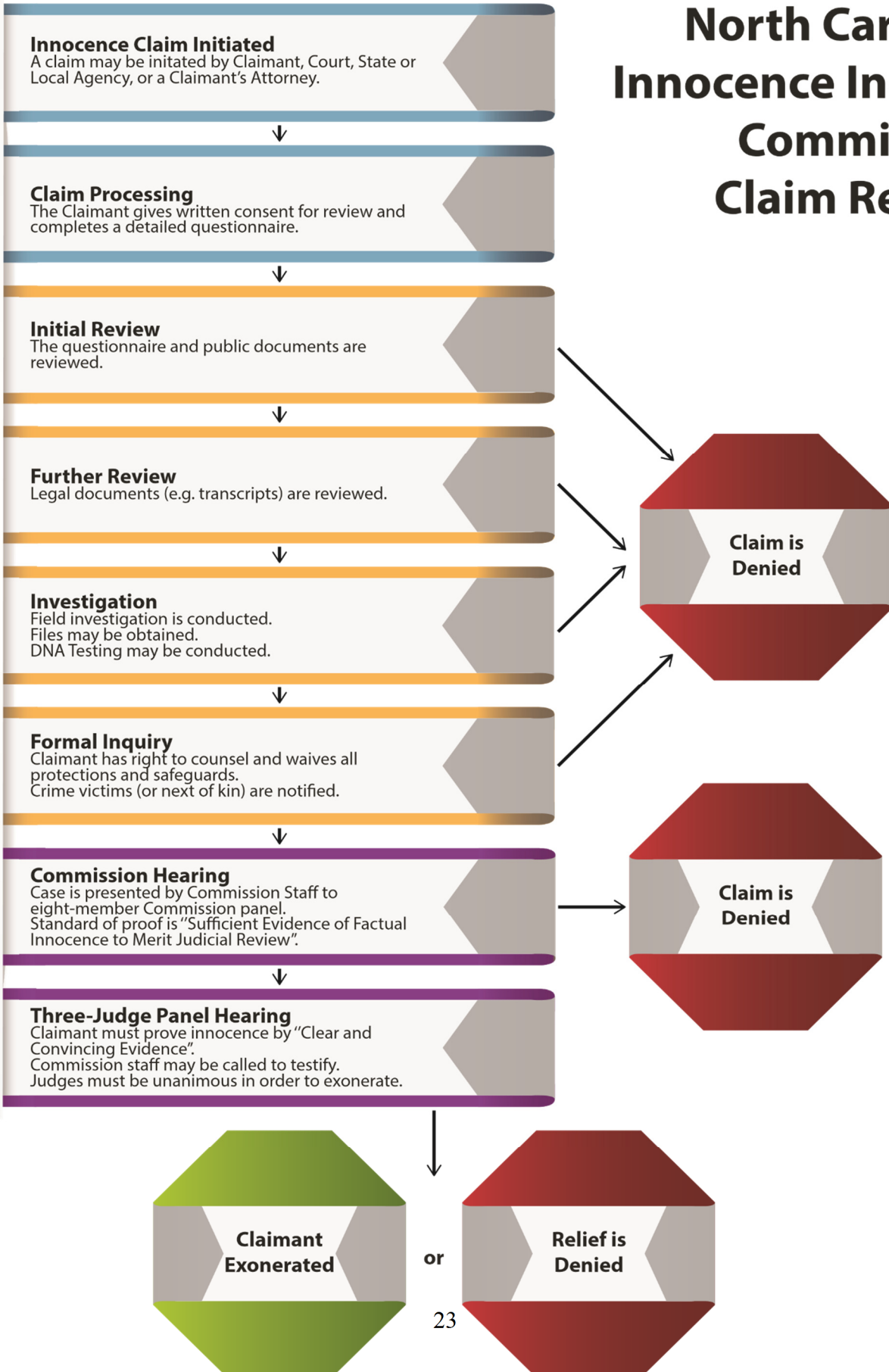
⁵ Evidence that has been completely destroyed will likely not be verifiable.

⁶ Any evidence previously heard by a jury will not be considered. Any ruled upon by a Judge at a post-conviction hearing will not be considered. A denial of a Motion for Appropriate Relief without a hearing will not be considered as evidence heard by a Judge.

⁷ Evidence that would be considered not to have been reasonably available to the claimant includes, but is not limited to, a witness who could not be located or refused to testify, scientific testing that was not completed, or newly discovered evidence.

Appendix B

North Carolina Innocence Inquiry Commission Claim Review



Appendix C

STATE OF NORTH CAROLINA			► <i>File No.</i> _____
_____ County			In The General Court of Justice Superior Court Division
STATE OF NORTH CAROLINA vs.		WAIVER OF PROCEDURAL SAFEGUARDS AND PRIVILEGES	
Name of Defendant _____		N.C. G.S. 15A-1467(b)	
DOB _____	Age _____	Highest Level of Education Completed _____	
Convicted Offense(s) _____			
Alleged Date of Offense _____		Date of Conviction _____	
<p>Pursuant to N.C. G.S. 15A-1467(b), the convicted person and his/her counsel must review the complete waiver before signing. Convicted person's counsel must be present at the signing. This form must be notarized.</p> <p>The convicted person and his/her attorney must both place their initials to the right of each statement if they agree with the statement and agree to comply with any terms therein.</p> <p>The North Carolina Innocence Inquiry Commission shall be referred to as "the Commission" throughout this document.</p>			
		Initials of Convicted Person	Initials of Counsel
1. I acknowledge that I have been convicted of the offense(s) noted above by the State of North Carolina.		(1) _____	(1) _____
2. I believe that evidence of my complete and factual innocence of the crime(s) for which I was convicted exists.		(2) _____	(2) _____
3. I am requesting that the Commission review my claim of complete factual innocence.		(3) _____	(3) _____
4. I have been appointed or retained counsel and my counsel has fully explained the implication that signing this waiver could have for me or I have waived my right to counsel.		(4) _____	(4) _____
5. (a) My counsel is present with me pursuant to N.C. G.S. 15A-1467(b) or		(5a) _____	(5a) _____
(b) I have waived my right to counsel and understand the implications that signing this waiver could have for me.		(5b) _____	(5b) _____
6. I agree to cooperate fully with the Commission pursuant to N.C. G.S. 15A-1467(b).		(6) _____	(6) _____
7. I agree to provide full disclosure regarding all inquiry requirements of the Commission pursuant to N.C. G.S. 15A-1467(b).		(7) _____	(7) _____
8. I understand that if I refuse to cooperate in any way or become uncooperative with Commission staff in any way, the inquiry will be discontinued pursuant to N.C. G.S. 15A-1467(g).		(8) _____	(8) _____

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<p>9. I understand that the Commission has the right to subject physical evidence to forensic and DNA testing, including consumption of biological material, as necessary for the Commission's inquiry.</p>	(9) _____	(9) _____
<p>10. I understand that the Commission staff may determine that my case does not meet the criteria set forth in N.C. G.S. 1460-1475 at any point and reject my claim.</p>	(10) _____	(10) _____
<p>11. I understand that I have no right to appeal a rejection of my claim during the review or investigation.</p>	(11) _____	(11) _____
<p>12. I understand that I have no right to appeal a rejection of my claim after a hearing by the Commission.</p>	(12) _____	(12) _____
<p>13. I understand that I have no right to appeal a denial of relief after a hearing by a panel of three Superior Court Judges.</p>	(13) _____	(13) _____
<p>14. (a) I understand that I am waiving all my procedural safeguards and privileges, with regard to my claim of innocence, pursuant to N.C. G.S. 15A-1467(b).</p>	(14a) _____	(14a) _____
<p>(b) I understand that this includes a waiver of my right against self incrimination pursuant to the 5th Amendment of the United States Constitution and Article I Section 23 of the North Carolina State Constitution.</p>	(14b) _____	(14b) _____
<p>(c) I understand that this includes a waiver of any privileges to prevent testimony of others, including but not limited to: spousal, clergy, and medical privilege.</p>	(14c) _____	(14c) _____
<p>(d) I understand that this includes a waiver of attorney-client privilege for any attorney who has represented or is representing me in connection with the crime(s) for which I was convicted.</p>	(14d) _____	(14d) _____
<p>15. I understand that the Commission is under a duty to provide disclosure to the appropriate authorities of the following.</p>		
<p>(a) Evidence uncovered by the Commission staff that supports my guilt.</p>	(15a) _____	(15a) _____
<p>(b) Evidence uncovered by the Commission staff that tends to show I may have committed unrelated felonies.</p>	(15b) _____	(15b) _____
<p>(c) Evidence uncovered by the Commission staff that tends to show I may be guilty of a higher level crime than the one for which I was charged or convicted.</p>	(15c) _____	(15c) _____
<p>(d) Evidence uncovered by the Commission staff that tends to show that other people may have been involved in the commission of the crime for which I was convicted.</p>	(15d) _____	(15d) _____
<p>(e) Evidence of criminal acts, professional misconduct, and other wrongdoings of others will be referred to the appropriate authorities pursuant to N.C. G.S. 15A-1468(d).</p>	(15e) _____	(15e) _____
<p>16. I also understand that evidence uncovered by the Commission staff that is favorable to me shall be disclosed to me and/or my counsel regardless of the outcome of the hearings pursuant to N.C. G.S. 14-1468(d).</p>	(16) _____	(16) _____

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	ACKNOWLEDGEMENT BY CONVICTED PERSON	
<p>I have read and understand all of the above statements. By initialing the statements and I signing below, I understand and agree to comply with any terms therein. No one has told me to agree to anything that I oppose or do not understand. My agreements are of my own free will and are given voluntarily.</p>		
<p><i>Date</i></p>		
<p><i>Signature of Convicted Person</i></p>		
<p><i>Name of Convicted Person (Type or Print)</i></p>		
	CERTIFICATION BY ATTORNEY FOR CONVICTED PERSON	
<p>I hereby certify that I have fully explained to the convicted person each statement and that his/her signature is a result of an independent and informed decision made by him/her. I further certify that I was with the convicted person as he/she provided initials and signature to this document and that the signature above is indeed that of the convicted person.</p>		
<p><i>Date</i></p>		
<p><i>Signature of Lawyer for Convicted Person</i></p>		
<p><i>Name of Lawyer for Convicted Person (Type or Print)</i></p>		
	SWORN AND SUBSCRIBED BEFORE ME	
<p><i>Date</i></p>		
<p><i>Signature of Notary</i></p>		
<p><i>Name of Notary</i></p>		
<p><i>Notary Commission Expires</i></p>		
<p>The original copy of this form must be delivered to the Commission staff. Please retain a copy for attorney records and a copy for the convicted person.</p>		